

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD CARUSO,

Plaintiff,

v.

NATIONAL RECOVERY  
AGENCY,

Defendant.

Case No. 16-cv-1679-BAS(WVG)

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
LEAVE TO PROCEED IN  
FORMA PAUPERIS**

**[ECF No. 2]**

On June 29, 2016, Plaintiff Richard Caruso, proceeding *pro se*, commenced this action against Defendant National Recovery Agency. On the same day, Plaintiff also filed a motion seeking leave to proceed *in forma pauperis* ("IFP"). For the reasons discussed below, the Court **GRANTS** Plaintiff's motion to proceed IFP.

The determination of indigency falls within the district court's discretion. *Cal. Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev'd on other grounds*, 506 U.S. 194 (1993) (holding that "Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied the statute's requirement of indigency"). It is well-settled that a party need not be

1 completely destitute to proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours*  
 2 & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C. §  
 3 1915(a), “an affidavit [of poverty] is sufficient which states that one cannot because  
 4 of his poverty pay or give security for costs . . . and still be able to provide himself  
 5 and dependents with the necessities of life.” *Id.* at 339. At the same time, however,  
 6 “the same even-handed care must be employed to assure that federal funds are not  
 7 squandered to underwrite, at public expense, . . . the remonstrances of a suitor who  
 8 is financially able, in whole or in material part, to pull his own oar.” *Temple v.*  
 9 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

10 District courts, therefore, tend to reject IFP applications where the applicant  
 11 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*  
 12 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*  
 13 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a district  
 14 court did not abuse its discretion in requiring a partial fee payment from a prisoner  
 15 who had a \$14.61 monthly salary and who received \$110 per month from family).  
 16 Moreover, “*in forma pauperis* status may be acquired and lost during the course of  
 17 litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL  
 18 311150, at \*2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see*  
 19 *also Allen v. Kelly*, 1995 WL 396860, at \*2 (N.D. Cal. June 29, 1995) (holding that  
 20 a plaintiff who was initially permitted to proceed *in forma pauperis* should be  
 21 required to pay his \$120 filing fee out of a \$900 settlement). In addition, the facts as  
 22 to the affiant’s poverty must be stated “with some particularity, definiteness, and  
 23 certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).


24 Having read and considered Plaintiff’s application, the Court finds that  
 25 Plaintiff meets the requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff is  
 26 unemployed and states that he has no sources of income. (IFP Mot. ¶¶ 1-2.) The only  
 27 asset that Plaintiff owns is an automobile that he values at \$500.00. (*Id.* ¶ 5.) In  
 28 addition to having a 7-year-old dependent, Plaintiff lists \$1,026.00 of monthly

1 expenses. (*Id.* ¶¶ 7-8.) Given that Plaintiff has no income, his listed monthly expenses  
2 clearly exceed his non-existent income. Consequently, the Court finds that requiring  
3 Plaintiff to pay the court filing fees would impair his ability to obtain the necessities  
4 of life. *See Adkins*, 335 U.S. at 339.

5 In light of the foregoing, the Court **GRANTS** Plaintiff's application for leave  
6 to proceed *in forma pauperis*. (ECF No. 2.) However, if it appears at any time in the  
7 future that Plaintiff's financial picture has improved for any reason, the Court will  
8 direct Plaintiff to pay the filing fee to the Clerk of the Court. **This includes any**  
9 **recovery Plaintiff may realize from this suit or others, and any assistance**  
10 **Plaintiff may receive from family or the government.**

11 **IT IS SO ORDERED.**

12  
13 **DATED: July 22, 2016**

14   
15 **Hon. Cynthia Bashant**  
16 **United States District Judge**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28